IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

SA.No. 608 of 2001(E)

(AGAINST THE JUDGMENT AND DECREE IN AS NO. 78/98 AND IN AS NO. 129/98 ON THE FILE OF THE SUB COURT, KOZHIKODE DT. 31/07/2000 FROM THE JUDGMENT AND DECREE IN OS NO. 692/97 ON THE FILE OF THE MUNSIFF COURT, KOZHIKODE DT. 19/05/1998)

APPELLANT/IST RESPONDENT IN AS NO. 78/98 & APPELLANT IN A.S. NO. 129/98 PLAINTIFF IN THE SUIT:

MUHAMMED ABDURAHIMAN MEMORIAL EDUCATIONAL SOCIETY, KOZHIKODE NO. 377/97, REP. BY ITS SECRETARY P. SAHADEVAN.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS/APPELLANTS AND 2ND RESPONDENT IN AS NO. 78/98 & RESPONDENTS IN AS NO. 129/98/DEFENDANTS IN THE SUIT

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1. **T. BALAKRISHNAN NAIR, S/O. KRISHNAN NAIR, RESIDING AT KUZHUVADATH HOUSE, PARAMBIL, KOZHIKODE.**

2. **P.M. ABDURAHIMAN, S/O. O.P. MUHAMMED, RESIDING AT XANADU, PARABIL, KOZHIKODE.**

3. **SHAJU THATTARAKKAL, S/O. MOIDEEN, P.O. PARAMBIL, KOZHIKODE.**

4. **K. CHANDRAN NAIR, S/O. KRISHNAN NAIR, KUZHUVADATH HOUSE, P.O. PARAMBIL, KOZHIKODE.**

5. **P.P. BHARATHAN, S/O. UNEERIKUTTY, P.O. PARAMBIL, KOZHIKODE.**

*6. **C. MOIDEEN, S/O. MUHAMMED, RESIDING AT CHARATTU, PARAMBATH HOUSE, P.O. PARAMBIL, KOZHIKODE.** ***(DIED)***

(IT IS RECORDED AT THE RISK OF THE APPELLANT THAT THE 6TH RESPONDENT IS DEAD AND HIS LEGAL HEIRS NEED NOT BE IMPLEADED VIDE ORDER DATED 29/09/2004 IN MEMO OF 6680/2004 DT. 23/09/2004.

7. T. UMMER, S/O. KUNHAYIN,
PARAMBIL P.O. KOZHIKODE.

8. P. ABDUL KHADER,
S/O. BEERANKUTTY,
PAINGALIL HOUSE, POOLAKKADAVU,
MARYKUNNU P.O., KOZHIKODE.

9. P.K. SREEDHARAN, S/O. KUMARAN,
P.O. PARAMBIL, KOZHIKODE.

10. K. HARIDASAN, S/O. PACHUKUTTY,
KURUMCHATHAARI HOUSE,
P.O. PARAMBIL, KOZHIKODE.

11. M.K. KUTTYKRISHNAN NAMBIAR,
S/O. RAVUNNIKUTTY NAIR, KANIKUTTAYADATH,
P.O. PARAMBIL, KOZHIKODE.

12. T. KUNHAYIN KOYA, S/O. ABU,
RESIDING AT THATTARAKKAL,
P.O. PARAMBIL, KOZHIKODE.

13. T.P. PURUSHOTHAMAN,
S/O. BALAN, RESIDING AT PARATTUMMAL HOUSE,
PARAMBIL P.O., KOZHIKODE.

14. P. ABOOBACKER, S/O. ABDULLA,
RESIDING AT PALLIYODATH HOUSE,
P.O. PARAMBIL, KOZHIKODE.

15. M.V. VISWANATHAN, S/O. ACHUTHAN NAIR,
P.O. PARAMBIL, KOZHIKODE.

BY ADV. SRI.JACOB ABRAHAM (R1 TO R5, R7 TO 15)
ADV. SRI.JACOB ABRAHAM

THIS SECOND APPEAL HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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S.A. NO.608 OF 2001

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Dated this the 18th day of October, 2007

JUDGMENT

O.S.692/2007 was filed by plaintiff seeking a decree for a declaration that registration of Mohammed Abdurahiman Memorial Upper Primary School parambil kadavu under registration No.440/1997 is null and void and only appellant society is entitled to manage Mohammed Abdurahiman Memorial Upper Primary School parambil and for a permanent prohibitory injunction restraining respondents or their men claiming any right or management of the school on the strength of the society registered as 440/1997. It was contended by appellant that Mohammed Abdurahiman Memorial Upper Primary School Parambil Kadavu was being mangaged by Mohammed Abdurahiman Memorail Higher Elementary School as society which was registered under Societies Registration Act as 7/1957 and subsequently the society ceased to function and the well wishers of

the school and public submitted a memorandum of association before District Registrar and the Registrar stopped the functioning of the school and issued an order dated 26.4.1987 to stop the function of the society 7/1957 and thereafter the public and well wishers of the school convened a meeting and decided to form a new society to take over the administration of the school and thus appellant society by name Mohammed Abdurahiman Educational Society was formed which was registered as society 377/1977. It was contended that only appellant society has the right to manage the school and the society formed by respondents and registered as 440/1997 is null and void. Respondents in their written statement contended that appellant society did not do anything for the school and they have no right to manage the school and the society was formed and registered as 440/1997, which is a name distinctly different from the name of the appellant society and that society was not intended to upset the management

of the school as alleged and therefore appellant is not entitled to the decree sought for. It was also contended that appellant society is not entitled to manage the school and the society which was registered as 7/1957 was formed with the specific objective of starting a Higher Elementary School by name Mohammed Abdurahiman Memorial Higher Secondary School and the said society is the owner of the school and has been running the same and the title of the school vests with that society and T.Ummer was elected as the Manager of the school in 1960 by the Higher Elementary School Committee and his appointment has been duly approved by educational department and society owns 70 cents of land and building. It is now housed in eight buildings and in June 1977 there was only a handful of members of the original Higher Elementary School Committee and they felt that it is desirable to admit more members and accordingly additional members were admitted and a general body was convened on 25.7.1997 and a new committee was

elected and it was decided to handover the assets to that Committee and the name of the society was also changed and accordingly a new society was formed and it was registered as 440/1997 and the Secretary of the appellant society had filed O.P.15237/1997 before High Court questioning the action of the educational authorities with regard to the management of the school and suppressing the said fact suit was filed.

2. Learned Munsiff on the evidence of PW1, DW1 and DW2, Exts.A1 to A6 and B1 to B7 partly decreed the suit declaring that registration of the society as 440/1997, with an intention to take over the management of Mohammed Abdurahiman Memorial U.P. School, Parambil Kadavu, is null and void. Except the members of society No.7/1957 all the other respondents are restrained from interfering with the administration and management of the said school till they are enrolled as members of the society 7/1957. That judgment was challenged before Sub Court, Kozhikode in A.S.243/1998 by

respondents and A.S.147/1998 by appellants which were subsequently numbered as A.S.78/1998 and A.S.129/1998 before Sub Court, Kozhikode, after they were transferred to that court by the District Court. They were disposed by common judgment dated 31.7.2004. Learned Sub Judge allowed A.S.78/98 and dismissed A.S.129/98 holding that no decree as against the society 440/1997 could be granted without impleading the said society as a defendant in the suit. It is challenged in the second appeal.

3. Learned counsel appearing for appellant and respondents, who appeared on receipt of the application filed under section 5 of the Limitation Act to condone the delay in filing the appeal, were heard.

4. The relief sought for by appellant in the suit was a declaration that registration of 440/1997 is null and void on the ground that the original society 7/1957 has become defunct and thereafter appellant society was formed, which was

registered as 377/1997 and therefore respondents are not entitled to form society No.440/1997 claiming management of the school and the formation and registration of the second society as 440/1997 is null and void. Admittedly original society Mohammed Abdurahiman Memorial Higher Secondary Elementary School, was registered as 7/1957. It was formed for formation of Higher Secondary School, in the name of Mohammed Abdurahiman. Though appellant contended that the said society has become defunct, it is not disputed that atleast some of the members of the said society are alive. It is on that basis courts below found that society 7/1957 has not become defunct and only the said society is entitled to manage the school. The argument of learned counsel appearing for appellant is that as first appellate court found that a decree sought for by the appellant could not be granted without impleading society by name Mohammed Abdurahiman Memorial Upper Primary School Committee which was registered as

society 440/1997, first appellate court should not have decided on the merits including whether the said society is a continuation of the original society 7/1957 and the decree and judgment of first appellate court are therefore unsustainable. There is force in the submission. It is found that the relief sought for in the suit cannot be granted without impleading the necessary parties. When it was so found first appellate court should not have further decided the further disputes involved in the suit.

5.The real dispute between the parties is whether the original society 7/1957 has become defunct and whether appellant society was formed as a continuation of the said society or society 440/1997 was the continuation of the said society. Finding that no relief could be granted without the second society namely society 440/1997 as a defendant first appellate court should not have decided the further dispute whether the said society is the continuation of the original society

7/1957 and the suit should have been dismissed on that ground finding of first appellate court that appellant is not entitled to the decree for want of necessary parties is correct. Once that is found the suit has to be dismissed as has been done by the first appellate court. No substantial question of law is involved in the appeal. It is dismissed. But as suit is dismissed for non-joinder of necessary parties, it is made clear that finding of first appellate court that society 440/1997 is a continuation of the original society 7/1957 will not prevent appellant from instituting a proper suit impleading the said society and seeking appropriate relief, if appellant has any right in law.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006